

Proposed Ordinance No. ____

BEFORE THE CITY COUNCIL OF EUGENE, OREGON

AN ORDINANCE CONCERNING THE PROTECTION OF THE HEALTH, SAFETY, AND WELFARE OF RESIDENTS AND ECOSYSTEMS OF EUGENE, OREGON, RECOGNITION OF DUTIES UNDER THE PUBLIC TRUST DOCTRINE AND THE RIGHT OF THE PEOPLE AND OUR POSTERITY TO A LIVABLE FUTURE, CREATION OF A CLIMATE RECOVERY PLAN, AND THE ADDITION OF A “CLIMATE AND FUTURE GENERATIONS” CHAPTER TO THE EUGENE CODE.

THE CITY COUNCIL OF THE CITY OF EUGENE FINDS AS FOLLOWS:

- A.** The atmosphere is a crucial natural resource protected under the Public Trust Doctrine.
- B.** All governments, including municipal, have a duty under the Public Trust Doctrine to young people and future generations to protect the atmosphere and take science-based action on climate change.
- C.** Climate change is caused by anthropogenic activities, primarily from the burning of fossil fuels.
- D.** Mean global temperature is increasing as a result of increased atmospheric concentrations of greenhouse gases, primarily carbon dioxide (CO₂), emitted from human activities.
- E.** The decade from 2000 to 2010 was the warmest on record; 2005 and 2010 tied for the hottest years on record; and January through September 2012 were the warmest first nine months of any year on record for the contiguous United States.
- F.** CO₂ levels in the atmosphere surpassed 400 parts per million (ppm) for the first time in 800,000 years and are averaging around 395 ppm in the year 2013.
- G.** Scientists predict that by 2100 average global temperatures will be 2 to 11.5 degrees Fahrenheit higher than they are now depending on the rate of emissions.
- H.** Emissions of greenhouse gases and especially CO₂ are already causing large-scale problems including ocean acidification, ocean warming, and warming of the Earth’s surface, which lead to rising seas, more frequent and severe weather events, such as storms, heavy rainfall and flooding, heat waves and drought, intense and destructive wildfires, disrupted ecosystems and agriculture, more disease, famine, and conflict and human loss of life.

- I.** One of the world's leading climate scientists, Dr. James Hansen, stated in 2008: "If humanity wishes to preserve a planet similar to that on which civilization developed and to which life on Earth is adapted . . . CO₂ will need to be reduced. . . to at most 350 ppm." The scientific prescription for achieving this reduction requires a 6% annual reduction of carbon dioxide emissions globally until 2050, in addition to substantial reforestation.
- J.** Scientists have concluded that we risk losing one-fourth of the planet's species by mid-century due to climate change.
- K.** The world's land-based ice is rapidly melting, threatening water supplies in many regions and raising sea levels; Arctic summer sea ice extent has decreased to about half of what it was several decades ago, and reached a record low in 2012, with an accompanying drastic reduction in sea-ice thickness and volume, which is severely jeopardizing ice-dependent animals.
- L.** Global sea level is rising 60 percent faster than projected by the Intergovernmental Panel on Climate Change; and sea level could rise by one to two meters in this century, threatening millions of Americans with severe flooding.
- M.** Climate change has led, and will continue to lead, to increasingly severe, extreme, and unpredictable weather events. Extreme weather events, most notably heat waves and precipitation extremes, are striking with increased frequency, with deadly consequences for people and wildlife; in the United States in 2011 alone, a record 14 weather and climate disasters occurred, including droughts, heat waves, and floods, that cost at least \$1 billion each in damages and loss of human lives.
- N.** Environmental regulations often produce long-term economic benefits that far exceed the short-term cost of regulation.
- O.** Climate change is affecting food security by reducing the growth and yields of important crops.
- P.** Droughts, floods, and changes in snowpack are altering water supplies; as of October 2, 2012, 64.6 percent of the contiguous U.S. was experiencing moderate-to-exceptional drought; and in 2012, the U.S. Department of Agriculture designated more than half (50.3 percent) of all U.S. counties disaster areas, mainly due to drought.
- Q.** The health and welfare of the citizens of Eugene is threatened by these climatic changes.
- R.** Climate change threatens the stability of Eugene's water supply by shifting the timing of peak runoff in the Cascade Mountains and by decreasing average

annual snowpack, which provides water for local agriculture, industry, and residential use. By mid-century, the Cascade snowpack is predicted to be 50% of present levels.

- S. As temperatures continue to increase, so will pollen counts and poor air quality, leading to increases in respiratory illnesses in the Willamette Valley.
- T. The Sustainability Commission's survey of Eugene residents shows that more than 80% of Eugenians believe "that climate change requires us to entirely rethink our behavior," 75% of Eugenians want stronger regulation of greenhouse gas emissions, and the vast majority of Eugenians believe that over-consumption threatens our environment and that our lives would be better if we consumed less.
- U. Local governments, in conjunction with the government of Oregon and the federal government, have a fiduciary responsibility to address the aforementioned climatic changes.
- V. A regular comprehensive audit and accounting of carbon dioxide and other greenhouse gas emissions is necessary to guide appropriate mitigation and adaptation measures against climatic changes.
- W. The federal government has a fiduciary duty to develop a Climate Recovery Plan to reduce carbon dioxide concentrations in the atmosphere to 350 ppm by the end of the century, according to the best available science.
- X. Although the federal government is not abiding by its legal duty to protect the public trust and is not providing greater leadership for this national and global crisis, local and state governments must do all they can to implement science-based climate recovery efforts for the sake of our children and future generations.

Now, Therefore,

The City of Eugene does ordain as follows:

Chapter 10: Climate and Future Generations

Section 1 – Findings and Declaration of Purpose

The Eugene Municipal Charter states that councilors shall treat their office as a public trust. Given this charge, the City Council of Eugene recognizes that the State of Oregon and the United States are failing to adequately protect vital public resources and address climate change and ocean acidification and are, thus, failing to protect current and future generations from irreparable harm. As trustees to the citizens of Eugene, the city council recognizes its duty to take further action to protect vital public resources. In

failing to adequately reduce carbon dioxide and other greenhouse gas emissions and thereby prevent substantial impairment of vital natural resources, including the atmosphere, the State of Oregon and the federal government have not met their duties as trustees of public resources. Protection of vital natural resources, which our citizens commonly share, must be based on the prescriptions for action offered by the best available science, if governments are to meet their fiduciary duties to the public to avoid substantial impairment of these resources.

The City Council of Eugene recognizes that local lawmakers have the ability to address portions of the current climate crisis, but acknowledges that there are some limitations on what local governments can achieve if states and the federal government fail to act in a supportive and collaborative manner. Comprehensive state and federal climate recovery plans are needed in order to adequately address the global climate challenge. That being said, the City of Eugene will take all necessary action to meet our city's goal to reduce community-wide greenhouse gas emissions to 10 percent below 1990 levels by 2020. We hereby commit to that goal and pledge to make mandatory greenhouse gas emission reductions. Additionally, we pledge to develop a comprehensive climate recovery plan by January 1, 2015, and to begin implementation of that plan in February 2015. Finally, from that point forward we pledge to reevaluate the city's greenhouse gas emission reduction strategy, as well as other climate change mitigation and adaptation proposals, within a framework guided by the public trust doctrine and the best available science.

Section 2 – Definitions

- (a) "Adaptation" is the adjustment or preparation of human systems to new natural systems or a changing environment which moderates harm to both human and natural systems and identifies beneficial opportunities.
- (b) The "best available science" standard requires that government actions be based upon the best scientific data available and prohibits governments or their agents from disregarding scientific evidence that may be better than the scientific evidence they choose to rely upon.
- (c) "Carbon dioxide equivalent" is a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP).
- (d) A "comprehensive climate recovery plan" is a plan that is informed by the best available science and is designed to reduce GHG emissions and initiate substantial reforestation to return the atmosphere to a substantially unimpaired state, *i.e.*, levels of carbon dioxide not exceeding 350 ppm.
- (e) "Crucial/vital natural resources" for Eugene include the atmosphere, wildlife, forests, soils, and bodies of water including, but not limited to glaciers, mountain snowpack, rivers, lakes, estuaries, and the Pacific Ocean.

- (f) “GHGs or greenhouse gases” means gases that absorb infrared radiation in the atmosphere, trap heat, and contribute to the greenhouse effect, like carbon dioxide, methane, and chlorofluorocarbons, among others.
- (g) “Irreparable harm” is harm that cannot be reversed or repaired by human action in a reasonable time frame.
- (h) “Local” means the geophysical area within the City of Eugene’s jurisdiction including any GHG emissions, forests or soils over which it can exercise control or regulation.
- (i) “Mitigation” is human intervention to reduce the human impact on the climate system primarily by reducing GHG emissions.
- (j) “Ocean acidification” is the increased concentrations of carbon dioxide in sea water causing a measurable increase in acidity (i.e., a reduction in ocean pH), which affects marine organisms.
- (k) The “Public Trust Doctrine” is a legal doctrine that requires sovereign governments to manage and protect crucial natural resources, such as air and water, for the common benefit of their citizens. The Public Trust Doctrine embodies the human rights principles of intergenerational justice and the right to a healthy environment.
- (l) “Substantial impairment” of a natural resource occurs when the functionality of that resource for use by current and/or future generations of citizens has been compromised permanently or long-term.

Section 3 – Statement of Law

- (a) Natural Resources Held in Trust: All vital natural resources are held in trust for present and future generations. The trustees are any government, including the Eugene City Council and its agents. The beneficiaries are current and future residents of Eugene.
- (b) Right to a Sustainable Community: The residents of Eugene have a right to a sustainable community, and government decisions that may have an impact on crucial natural resources must be made in accordance with the city’s obligations under the Public Trust Doctrine.
- (c) Substantive Duties: Trustees of the Public Trust Doctrine have the affirmative duty, with vigilance and due care to: protect all crucial natural resources, including the atmosphere; restore damaged resources; prevent waste; gain maximum beneficial value from trust assets (not simply economic value); and seek damages from entities that substantially impair trust resources or threaten the rights of Eugene residents to a sustainable community and future.

- (d) Procedural Duties: Trustees of the Public Trust Doctrine have the affirmative duty to provide an accounting to citizens on a biennial basis and of prudent management employing a precautionary approach to any relevant action.
- (e) Modifications: At such time that state and/or federal climate recovery plans are adequately developed and begin to be implemented according to the best available science, the City shall review and modify this ordinance to the extent necessary to remedy inconsistent policies. A minimum of two public hearings shall be held to discuss modifications before this ordinance is amended.
- (f) Scientific disputes: Should disputes arise over the best available science used in the development of a climate recovery plan, they shall be admitted to scientific mediation by a mediator appointed by the city council.

Section 4 – Emission Limitations

By adopting this Ordinance, which shall be known and may be cited as the “Climate Recovery Ordinance of Eugene,” The City of Eugene commits to protect the health, safety, and welfare of residents and ecosystems by:

- (a) Reducing greenhouse gas (GHG) emissions by a minimum of 10% below 1990 levels by 2020 subject to adjustment based on section (c) below:
 - 1. GHG emission reductions shall be gauged using the carbon dioxide equivalent (CDE) standard; and
- (b) Reducing fossil-fuel consumption by 50% by 2030; and
- (c) By January 1, 2015, developing a Comprehensive Climate Recovery Plan for Eugene (“Plan”) - based on the best available science - which would determine (i) the total local carbon dioxide (CO₂) emission reductions (from 1990 levels) needed by 2050, (ii) the annual local CO₂ emission reductions needed to meet that 2050 target, and (iii) the forest and soil carbon sequestration measures needed to meet the scientific prescription established in Hansen, *et al.*, *Climate Change and Intergenerational Justice: Rapid Reduction of Carbon Emissions Required to Protect Young People, Future Generations and Nature*, Public Library of Science ONE (Dec. 2013), to return atmospheric levels of CO₂ to 350 parts per million (ppm) by 2100. The Plan shall address:
 - 1. A statement of local CO₂ emission levels in 1990 and what those levels should be in 2050 consistent with this section.
 - 2. A carbon budget through 2050;
 - 3. An updated carbon accounting for Eugene that accounts for changes since 2010;
 - 4. A statement of annual CO₂ emission reductions necessary to achieve the 2050 target.

5. An annual carbon budget for Eugene consistent with the necessary annual emission reductions and the carbon budget through 2050;
6. Mechanisms for meeting the carbon budget and emission reductions by sector;
7. Additional support needed by the City of Eugene from the state or federal governments to implement the Plan and achieve the reductions;
8. Additional laws or funds needed by the City of Eugene to implement the Plan and achieve the reductions;
9. An analysis of the economic benefits of the Plan, taking into account the real value of natural resources and ecological services;
10. A statement of the annual costs and savings to the City of Eugene to implement the Plan;
11. A statement as to the annual percentage of CO₂ emission reductions that is achievable without the additional support, laws, or funds identified in sub - sections (7) and (8) above.
12. An amendment of this ordinance and a public statement requiring emission reductions greater than 10% by 2020 if the answer to sub-section (11) would result in greater emission reductions.
13. Implementation of the plan beginning on February 1, 2015.

(d) Evaluating future city policies and decisions within the framework of the Public Trust Doctrine and the Plan, thus preserving the right of the people and our posterity to a livable future.

Section 5 – Enforcement

- (a) The fiduciary duty of the Trustees of the Public Trust shall be tied to the health of trust assets, as determined by the best available science.
- (b) The citizens of Eugene have a right to publicly comment on the Climate Recovery Plan and appropriate venues shall be provided for their engagement.
- (c) Should the trustees violate Section 4, the citizens of Eugene shall have access to a court of competent jurisdiction.

Section 6 – Effective Date

This Ordinance shall be effective thirty (30) days after the date of its enactment.

Section 7 – Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The City Council of Eugene hereby declares that in the event of such a decision, and the

determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 8 – Repealer

All inconsistent provisions of prior Ordinances adopted by the City of Eugene are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ____ day of _____, 2013, by the City of Eugene, in Lane County, Oregon.

Passed by the City Council this

Approved by the Mayor this

____ day of _____, 2013.

____ day of _____, 2013.

City Recorder

Mayor